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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/343,759	06/30/1999	RAYMOND J. HULL	PPC-668	8307

7590

05/23/2002

AUDLEY A CIAMPORCERO JR  
JOHNSON & JOHNSON  
ONE JOHNSON & JOHNSON PLAZA  
NEW BRUNSWICK, NJ 089337003

EXAMINER

RACHUBA, MAURINA T

ART UNIT

PAPER NUMBER

3723

DATE MAILED: 05/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n N .

09/343,759

Applicant(s)

Hull et al

Examiner

M Rachuba

Art Unit

3723

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 21-23 is/are pending in the application.
- 4a) Of the above claim(s) 1-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Paper No. 14

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 21, 2002 has been entered.

### ***Information Disclosure Statement***

2. The IDS, filed November 13, 2000, was considered before the first action on the merits. However, the IDS, along with a citation and copy of art by the examiner were not included in the mailing of the action. Copies are included with this action. Any inconvenience is regretted.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear how it is possible to have a "substantially infinite length" of web. The examiner has interpreted this limitation to mean that the web can be replenished, by manufacturing more web as needed.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 21-23 rejected under 35 U.S.C. 103(a) as being unpatentable over Friese '100 in view of Etheredge et al, 5,928,184. '100 discloses a method for the manufacture of a tampon comprising the steps of unwinding a web of liquid permeable, thermoplastic *non-woven* material which forms strip 15, the web having first and second edges and a substantially infinite length (which the examiner has interpreted as a replenished web); forming a line of weakness comprising *perforations* extending substantially from the first to the second edge; applying a force substantially parallel to the length of the web to separate an individual sheet from the web at the line of weakness, positioning the individual sheet over an absorbent sliver; attaching the sheet to the sliver, by adhering

Art Unit: 3723

or heat sealing; forming the sliver into a tampon blank, and compressing the blank to form a tampon having a cover comprising the individual sheet. '100 do not disclose the web being an apertured film, or scoring as well as perforating the web. '184, figure 2A, teach the use of a thermoplastic apertured *film* for use in the manufacture of tampons. It would have been obvious to one of ordinary skill in the art to have provided '100 with an apertured film in place of the non-woven thermoplastic strip 15, as taught by '184, to allow more uniform wetting of the tampon surface, by causing the menstrual fluid to be transported over the surface of the tampon to the apertures, from there to the center of the tampon. See column 2, lines 20-21 and column 4, lines 1-31.

8. As regards the limitation "forming a line of weakness comprising perforations and scores extending substantially from the first edge to the second edge", '100 disclose forming perforations in a non-woven web as the non-woven web is capable of tearing at the perforations to form an individual sheet. The examiner takes Official notice that one of ordinary skill in the art would recognize that different materials, depending on tensile strength, would require further weakening of the tear line, including differently shaped perforations, scoring, or intermittent grooving. It is the examiner's position that one of ordinary skill in the art would have found it obvious to have provided '100 with a method step of perforating and scoring the thermoplastic strip section 15, depending on it's tensile strength.

9. It is noted that '184 also disclose using a non-woven material as an overwrap. However, applicant's claim language "a method for the manufacture of a tampon

Art Unit: 3723

*comprising* the steps of..." does not prevent further method steps, such as adding an overwrap.

### ***Response to Arguments***

10. Applicant's argument that '100 do not anticipate the claimed method is persuasive, and the rejection under 35 USC 102 alone has been withdrawn. However, it is the examiner's position that the use of a thermoplastic, apertured film is old and well known in the art, as evidenced by the teachings of '184.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Other prior art references disclose the use of an apertured film used with personal hygiene products are cited of interest.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M Rachuba whose telephone number is 703-308-1361. The examiner can normally be reached on Monday-Thursday, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 703-308-2687. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9302 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Application/Control Number: 09/343,759

Page 6

Art Unit: 3723

A handwritten signature in black ink, appearing to be 'M Rachuba', written over the printed name.

M Rachuba  
Primary Examiner  
Art Unit 3723

mtr

May 17, 2002